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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
HARTMANN, GARY S	
ART UNIT	**PAPER NUMBER**
3671	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/524,678	JONES, MARK RICHARD	
	Examiner	Art Unit	
	Gary Hartmann	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *33-52* is/are pending in the application.

4a) Of the above claim(s) *37-39* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *33-36 and 40-52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 February 2005* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Newly submitted claims 37-39 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the invention is directed to a repair apparatus and these newly submitted claims are directed to a chemical composition of a liquid. Note the liquid is not and has not been claimed in any claims other than these non-elected claims; rather, only a source for a liquid is claimed.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 37-39 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

The drawings are objected to because the lines are not uniformly thick and well defined. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification contains the trademark/trade name Fecralloy®, but does not provide a description of the material. Every recitation of the trademark must be in all capital letters (i.e., --FECRALLOY®--) and include an appropriate description of the material.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 40, 45 and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "generally approximate" in claims 40, 45 and 52 is a relative term which renders the claim indefinite. The term "generally approximate" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The parameters of the controller are rendered indefinite by this term.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 33-36, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver (U.S. Patent 3,625,489) in view of Goodhart et al. (U.S. Patent 6,659,684).

Weaver discloses an asphalt surface repair apparatus including a vehicle (12), a heater gas source (220), a pivotally mounted heater (30) and an asphalt source (274). Weaver does not teach the liquid source or dispenser; however, it is common in road repair to use a liquid source dispenser in order to rejuvenate an asphalt surface as desired. For example, Goodhart teaches such a system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a liquid source and dispenser in order to optimally repair an asphaltic surface, as taught by Goodhart. Note that because the heater of Weaver is positioned on the rear of the vehicle, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have positioned the liquid source ahead of the heater.

Regarding the heater blanket, Goodhart teaches using a heater blanket. Applicant's material is prior art and the thermal properties are well known to those skilled in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a blanket of the material as claimed in order to properly heat the pavement using a durable construction.

Regarding claim 40, as discussed in the previous Office action, a controller is inherent. Position sensors are also well known. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a position sensor in conjunction with the pivotable heater in order to, for example, prevent the heater from being turned on in the stowed position; thereby increasing safety.

There is a storage compartment (cab of vehicle, for example).

Claims 42-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver and Goodhart et al. as applied above, and further in view of Sivells et al. (U.S. Patent 6,279,838).

Goodhart teaches using a spray gun, which is broadly within the scope of a lance. Sivells teaches that a reel (3) and lance (46, see Figure 4, for example) combination is well known to be suitable for liquid application. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a reel and lance on the vehicle of Weaver in order to dispense material in a specific location, in accordance with the teachings of Goodhart and Sivells.

Regarding claim 46, given that the vehicle of Weaver is a truck, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a tow bar in order to tow any accessory necessary. It is noted that because the roller is not actually claimed, this limitation has not been treated; however, see Nagy (U.S. Patent 3,625,120) as evidence that this limitation would not be patentable even if the roller was claimed.

Regarding the plurality of heaters, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a plurality of heaters in order to, for

example, heat a wider section of pavement. This simple duplication of existing parts cannot patentably distinguish the present application from the prior art.

Claims 36, 44, 50 and 51 rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver/Goodhart et al. or Weaver/Goodhart et al./Sivells et al. as applied above, and further in view of de Bruyne et al. (U.S. Patent 5,088,919).

De Bruyne teaches the claimed material in conjunction with infrared heaters. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the blanket of Goodhart et al. from the claimed material in order to obtain a blanket having a durable construction.

Response to Arguments

Applicant's arguments filed 25 May 2007 have been considered but are moot in view of the new grounds of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 571-272-6989. The examiner can normally be reached on Tuesday through Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gh

Gary Hartmann
Primary Examiner
Art Unit 3671